

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>RENTECH ENERGY TECHNOLOGY CENTER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ADAMS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 62115</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 23 and 24, 2014, James R. Meurer and MaryKay Kelley presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Kerri Booth, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**4150 East 60<sup>th</sup> Avenue, Commerce City, Colorado  
Adams County Schedule No. 01823-07-3-00-043**

The subject consists of tangible personal property including machinery and equipment, office furniture and equipment, computers, and vehicles. The assets comprise the Integrated Biorefinery (IBR) formerly known as the Product Demonstration Unit (PDU). The PDU was built in 2008 to demonstrate that synthetic gas (“syngas”) could be used as diesel/jet fuel and be a viable alternative energy technology; it was built solely as a demonstration facility, not an economically viable production facility. A secondary purpose was to perfect technology to enable future licensing.

In 2009, the ClearFuels assets were acquired as a demonstration facility to convert biomass into syngas and converted into diesel/jet fuel. The United States Department of Energy (DOE) awarded a grant in 2009 to test technology for eventual use in a commercial-scale bio-refinery; commercial viability was not intended during this demonstration phase. The DOE grant required operation for 2,000 hours. This portion of the facility was mechanically complete in November of 2011, and testing began in 2012.

Respondent assigned an actual value for the personal property of \$52,166,302 but is recommending a reduction to \$47,767,831. Petitioner is requesting an actual value for the PDU of \$3,800,000 and an exemption for the ClearFuels. If not exempted, Petitioner is requesting a value for the ClearFuels of \$1,000,000.

Petitioner presented the following indicator of value:

Market:	\$3,800,000+\$1,000,000
Cost:	\$0
Income:	N/A

Petitioner's witness, Harold Wright, PhD, Senior Vice President and Technology Officer, discussed Rentech's inception in 1983 as an alternative energy company and Rentech's purchase of the Commerce City site in 1999. In 2005 and 2006, its goal was to replace petroleum with coal. However, economic conditions in the industry changed in 2007; natural gas became cheaper, it became clear there would be no legislation favoring the use of coal, the demand for alternative fuels declined, and funding became difficult to secure. Rentech turned to biomass as a replacement for coal.

In 2009, Rentech was awarded a \$23,000,000 DOE grant to convert biomass to syngas and then diesel fuel; Rentech committed an additional \$10,000,000. A time requirement of 2,000 hours was deemed necessary to prove the project was viable. Construction of the facility was complete in November of 2011, at which time testing began. Because the desired scale wasn't met and because unwanted tar was produced, a new water system and an oil separation system were installed in 2012. Also, because the yield of syngas was too low, the steam system was retained. In mid-2012, it was clear that 2,000 hours of biomass production was not viable. DOE funding was halted, a 200-hour demonstration run during the third and fourth quarters of 2012 was agreed on, and Rentech's Board of Directors decided to exit the alternative energy business and to shut down or sell the ClearFuels assets. The 200-hour demonstration run of the refinery was completed on February 27, 2013. Assets of PDU and ClearFuels were sold.

Dr. Wright argued that ClearFuels was exempt from property tax for tax year 2013 because "business use" had not yet occurred; research and testing are not "business use". ClearFuels had not yet performed its intended function of operating as part of an Integrated Biorefinery and demonstrating that synthetic fuels were capable of being produced solely from biomass. ClearFuels as a "business" was not in place during tax year 2012 or on January 1, 2013. Per Section 39-3-118.5, C.R.S., "business personal property shall be exempt from the levy and collection of property tax until such business personal property is first used in the business after acquisition". Per Dr. Wright, the ClearFuels was in testing and shakedown mode on January 1, 2013 and qualified as exempt. He referenced the Assessor's Reference Library (ARL).

Business personal property shall be exempt from the levy and collection of property tax until such business personal property is "first used" in the business after acquisition. Taxpayers are to be given this exemption during the "window" between the date that the personal property is

acquired and the date when the personal property is first used in the business.

Personal property that is on-site, but has not initially been put into service, qualifies for this exemption. The exemption also applies to property that is in a test or “shakedown” mode prior to being put into service. Personal property that is removed from service does not qualify.

ARL, Vol. 5, pages 2.19-2.20 (emphasis in original).

Petitioner’s witness, Robert Svoboda, Senior Member of the American Association of Appraisers, presented a market approach to derive a value of \$4,800,000 for the IBR (including the ClearFuels assets). He presented six comparable sales of pilot plants and demonstration units: two were relocated; three continued operating, although one was eventually razed; and one sold for salvage. Mr. Svoboda, thinking it unlikely the assets would be purchased for continued operation, considered the most comparable property to be Sale Six (liquid/alternative fuel company), which sold for relocation to China where alternative energy research was active and where there was an abundance of coal. He considered this transaction to be a liquidation sale and determined that highest and best use for the subject was liquidation.

Mr. Svoboda’s analysis of liquidation value involved commercial-scale chemical plants including those mentioned above and additional ones. All were sold for scrap or relocation between 1.25% and 20% of replacement cost. He estimated that a sale price for the IBR would be nearer the lower end of the range and concluded to 5% of replacement cost (\$90,600,000) times 5% or \$4,800,000 rounded. This liquidation value includes the PDU, ClearFuels assets, and miscellaneous assets.

Should the Board deny the exemption request for the ClearFuel assets, Mr. Svoboda applied the same calculation of 5% of ClearFuels’ RCN (\$20,000,000 rounded) or \$1,000,000.

Mr. Svoboda presented a cost approach to derive a value of zero. RCN for all assets plus inflation totaled \$90,600,000 rounded. RCN less physical depreciation (RCNLD), based on age and useful life per various publications, was determined to be \$54,400,000 rounded. Due to conditions in the alternative energy industry, Mr. Svoboda estimated industry-wide obsolescence (\$29,700,000) by application of two techniques; a financial ratio analysis of publicly traded biofuel companies, and market value/book value. He concluded to site-specific obsolescence (\$19,400,000) with an analysis of Rentech’s remaining useful life, which he estimated to be the end of the ClearFuels test period or three months. Further, he saw no potential of recouping the final three months of expenses (estimated at \$5,300,000) and cited this as site-specific obsolescence from continued financial losses. The IBR was at the end of its useful life with no prospects for operation beyond the 200-hour demonstration run, and the cost of producing synthetic fuels exceeded the potential selling price of the fuel. Value by the cost approach was estimated to be zero.

Respondent presented the following indicators of value:

Market: N/A  
Cost: \$47,767,831  
Income: N/A

Respondent's witness, Loren Morrow, Adams County personal property appraiser, argued that Petitioner's case for a ClearFuels exemption did not meet the statutory definition or the ARL definition. Mr. Morrow argued that the purpose of ClearFuels use was research and development and that biomass was introduced into the gasifier portion of the equipment in November of 2011. All equipment, once in service for research, is taxable. Rentech's equipment was being used for its intended purpose, that being testing.

Mr. Morrow presented a cost approach for value in use, concluding to a replacement cost new (RCN) of \$88,092,445 and a total RCNLD of \$47,767,831, which included the Clear Fuels assets. His calculations were based on the ARL's personal property tables and Marshall Valuation Service reflecting industry category, year of acquisition, economic life, and percent good. He did not apply economic obsolescence.

Mr. Morrow disagreed with Mr. Svoboda's "zero" value in stating that "if in use, it has value". He also disagreed with liquidation value because the property was not liquidated on January 1, 2013 but rather was in use before and after that date.

Petitioner presented sufficient probative testimony and evidence to prove that the subject property was incorrectly valued for tax year 2013.

The Board is convinced that the Clear Fuels assets are exempt from business personal property tax. Per ARL, Vol. 5, at 2.19-2.20, "Personal property that is on-site, but has not initially been put into service, qualifies for this exemption. The exemption also applies to property that is in a test or 'shakedown' mode prior to being put into service." The subject equipment and assets were not "in service" and were clearly in "test" and "shakedown" mode.

The Board gives little weight to Respondent's cost approach because it is convinced that economic obsolescence exists and should be applied; alternative energy technology has been generating losses, and stock prices for biofuels companies have declined since 2007. The Board is also persuaded that Petitioner's equity-to-book ratio analysis for determination of economic obsolescence falls within acceptable appraisal methodology, is supported by USPAP, and has been convincingly applied. However, the Board is convinced that the equipment carries some value and that conclusion of zero is not supportable.

The Board puts greatest weight on Petitioner's liquidation value per the market approach. Convinced that the equipment has some value and by Petitioner's analysis of pilot plants and demonstration units that have sold, the Board agrees with the argument that the equipment has liquidation value and that a conclusion of \$3,800,000 is supportable and convincing.

**ORDER:**

The Adams County Assessor is ordered to exempt the ClearFuels assets and reduce the actual value of the PDU and miscellaneous equipment to \$3,800,000.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

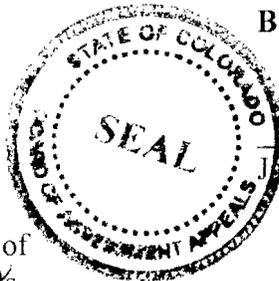
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 8th day of August, 2014.

**BOARD OF ASSESSMENT APPEALS**



James R. Meurer

*MaryKay Kelley*

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Lishchuk

MaryKay Kelley